Annual Report on the Activities of the Rental Office

January 1-December 31, 2009

Submitted by
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Rental Officer

The Residential Tenancies Act

The passage of the NWT *Residential Tenancies Act* in 1988 was part of a general trend in Canada to recognize residential landlord-tenant relationships as one of contract rather than an interest in land. The Act also established a tribunal dispute resolution mechanism which was designed to be less formal and more expedient than the courts. Older practices such as distraint for rent were abolished and common law contract principles such as mitigation of damages and contract frustration were established. The Act enabled the Minister to appoint one or more rental officers who would provide information to landlords and tenants and mediate or adjudicate landlord/tenant disputes, leaving the Supreme Court as the court of appeal.

The *Residential Tenancies Act* was amended in 2008 but the amendments have not yet been brought into force. The amendments to the Act, expected to be brought into force in 2010 are intended to update the Act, amend several errors, provide additional remedies in order to better protect landlords and tenants, and streamline the administrative process.

The Role of the Rental Office

- **A Provider of Information to Landlords and Tenants**

  The Rental Office is a convenient and accessible place for landlords and tenants to obtain information regarding their rights and obligations. Many landlord-tenant problems are solved simply by providing landlords and tenants with information concerning their respective rights and responsibilities. Many tenants and a surprising number of landlords are unaware of the legislation that governs their relationship or the tenancy agreement that forms the contract between them. The provision of information is probably the single most important function of the office, often serving to eliminate conflict and problems before they start.

  The Rental Office maintains a toll-free telephone number which can be used anywhere in Canada. We receive numerous calls each day seeking information concerning rights and obligations of landlords and tenants and the process for filing applications and resolving disputes. Increasingly, we also receive and respond to e-mail inquiries which can be made via our webpage.

  The Rental Office also provides written information, including a simple to read booklet outlining the major aspects of the *Residential Tenancies Act*, short fact sheets on selected topics and numerous standard forms. Like the day-to-day inquiries, the written material helps both landlords and tenants acquire an understanding of mutual rights and responsibilities to help to solve problems before they start.

  The Department of Justice maintains a website for the Rental Office that contains all of the written material as well as a link to the legislation and a searchable database of Rental Officer decisions.

The Rental Officer is also available to make presentations or participate in forums with tenants, property managers or others involved in residential tenancy matters. We provide these services free of charge in the belief that informed and knowledgeable landlords and tenants are more likely to respect the rights and obligations of each other and less likely to end up in a conflict situation.

- **Dispute Resolution**

Landlords and tenants are encouraged to attempt to resolve disputes themselves. Often, the information provided to the parties regarding their legal rights and obligations helps the parties resolve the dispute but a dispute resolution process is available to both landlords and tenants. The dispute resolution process can be initiated by a landlord or tenant by filing an Application to a Rental Officer.

On the filing of a application, the Rental Officer may investigate to determine the facts related to the dispute. Applications involving the physical condition of premises are often best understood through an inspection of the unit. Similarly, applications involving third parties, such as utility suppliers are often investigated.

Occasionally, the investigation leads to a resolution of the dispute by agreement. For example, a tenant may file an application when a security deposit has not been returned and no statement of the deposit has been provided to the tenant. A brief investigation into the matter may reveal that the landlord was unaware of the new address of the former tenant or of his responsibility to produce a statement. The production of the statement may lead to agreement between the parties and the withdrawal of the application.

Occasionally, the parties will agree to a mediated solution to the problem without recourse to a formal hearing or the issuance of an order. If the parties wish to try to settle the issue by mediation, the Rental Officer will assist them in the resolution of the matter and the preparation of a mediated agreement.

Often, landlords and tenants can not agree or, more often, one of the parties wants a decision which can be enforced, should the other party fail to abide by that decision. In these cases, the Rental Officer will hold a hearing and, after hearing the evidence and testimony of both parties, render a decision. The Rental Officer will issue a written order along with reasons for the decision. Orders by a Rental Officer may be filed in the Territorial Court and are deemed to be an order of that court when filed. Most disputes are settled in this manner as the majority of disputes concern non-payment of rent and an enforceable decision is desired by the applicant.

Market Trends [1]

Canada Mortgage and Housing Corporation reported that the Yellowknife apartment vacancy rate rose to 6% in October 2009, up from 0.9% from the previous October. Vacancies were generally highest in older apartment buildings built between 1960 and 1990 and lower than average in buildings constructed since 1990. Units renting for under $1400/month had higher vacancy rates than units renting for $1400/month or more. The townhouse vacancy rate also increased from 0.2% last year to 1.7% in October, 2009

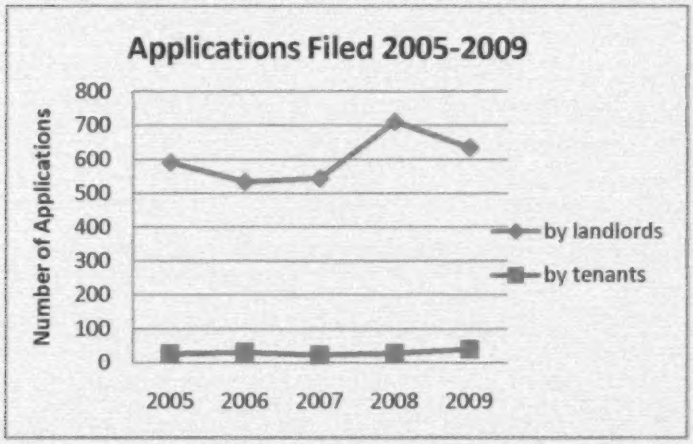
Despite rising vacancy rates, the average monthly apartment rent in Yellowknife increased from $1320 to $1381 during the period October, 2008 to October, 2009. Townhouse rents also increased from an average of $1590/month to $1696/month.

Rental Office Activity - 2009

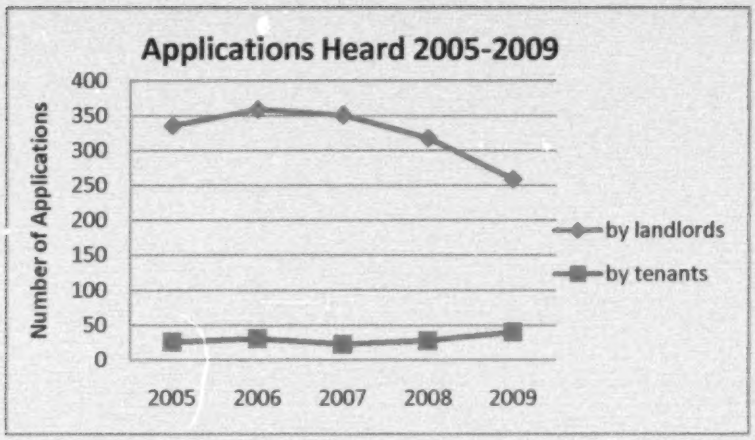
Hal Logsdon served as Rental Officer throughout the year. Ms. Kim Powless continued to serve as the Rental Office Administrator during the year.

Amendments to the *Residential Tenancies Act* received assent on June 19, 2008. The Department of Justice has been drafting public information and regulations prior to bringing the legislation into force. The Rental Officer and Rental Officer Administrator have been actively involved with the department in the production of this material.

The rental officer conducted several *Residential Tenancies Act* seminars for property managers during the year. We continue to offer seminars to landlord and tenant groups at no cost based on our assumption that increased awareness of the Act will result in fewer disputes and less recourse to legal action.

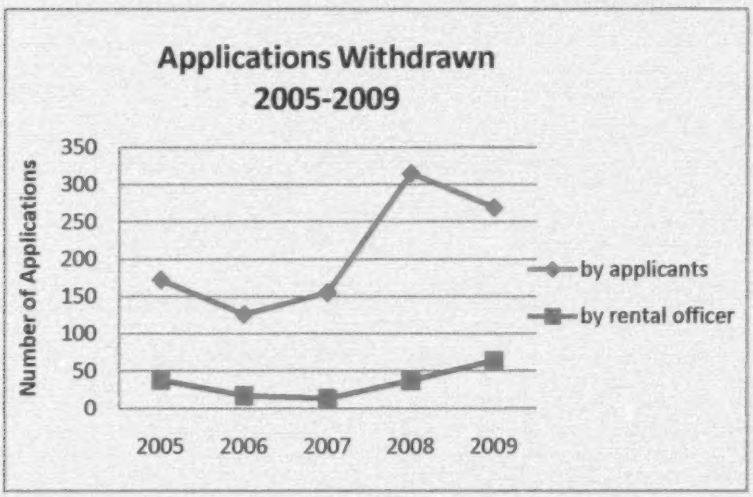


The number of applications filed dropped by 11% overall in 2009 with landlord applications dropping by 14% while tenant applications increased by 34%. Similarly, the number of applications heard in 2009 dropped by over 14% overall with the number of landlord applications heard dropping by over 19% while tenant applications increased by 43%. Both the number of tenant applications filed and number of tenant applications heard represent the highest levels since the rental office started to report statistics in 1996. This may be due to the combination of rising vacancy rates and increasing rents, inducing more tenants to seek legal recourse to enforce their rights. Still, the number of tenant applications filed represents only 9% of all applications filed.



The number of landlord applications heard continued to drop in 2009 reflecting both a trend by landlords to withdraw applications for rent if the rent arrears are paid prior to the hearing and a drop in applications filed.

The number of applications withdrawn by the rental officer increased significantly in 2009, indicating that applicants are more frequently failing to serve filed applications on the respondent. The rental officer may withdraw an application and close the file if the application is not served on the respondent within 14 days. The number of withdrawals, whether by applicant or the rental officer, reflects in part the number of disputes that are resolved without recourse to mediation or adjudication by the rental officer. This is undoubtedly a good thing but still involves a significant amount of administration involved to file the application and subsequently close the file.

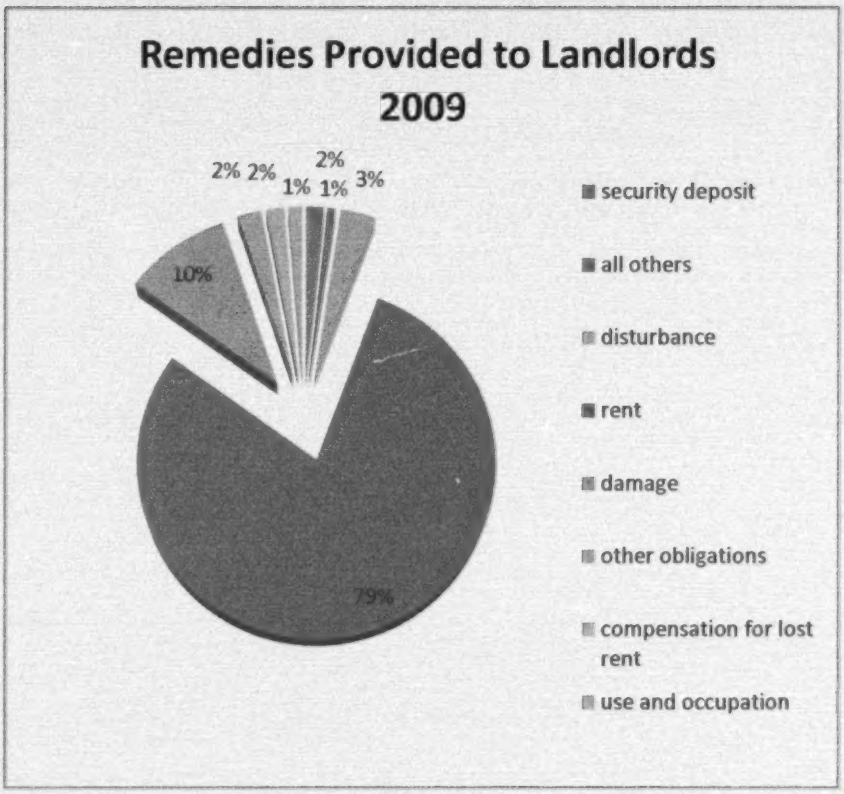


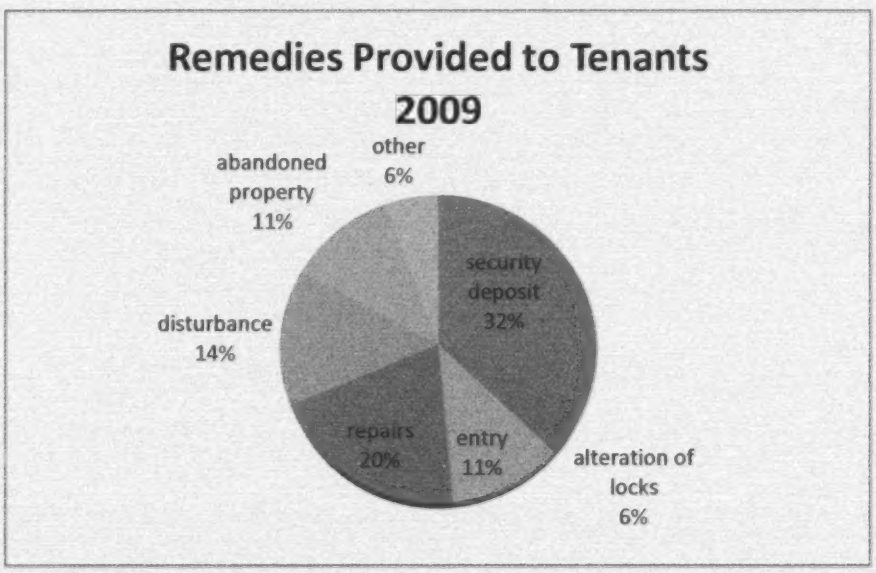
As has always been the case, applications from landlords make up the majority of applications filed and heard. However, as noted previously, the number of tenant applications filed and heard increased significantly in 2009. Landlords filed 92% of the applications heard in 2008. This fell to 87% in 2009 while tenant applications heard rose to 13% of the total applications heard.

The majority of landlord applications involve the non-payment of rent. Most of these applications are undisputed by the tenant and result in an agreement between the landlord and tenant about how the arrears will be paid. In many cases of rent arrears, the rental officer is able to mediate an agreement between the parties concerning how the rent arrears will be paid and issue an order reflecting that agreement.

Compensation for repairs of damages to rental premises is the second most common remedy provided to landlords followed by remedies for disturbance.

The most common remedies provided to tenants involve the return of security deposits. If a landlord retains all or part of a security deposit, they are obligated to issue a statement to the tenant itemizing the deductions. Only rent arrears and the cost of repair of damages may be deducted. If a tenant does not receive a statement, objects to a deduction or feels that the costs claimed are unreasonable, they may file an *Application to a Rental Officer*.



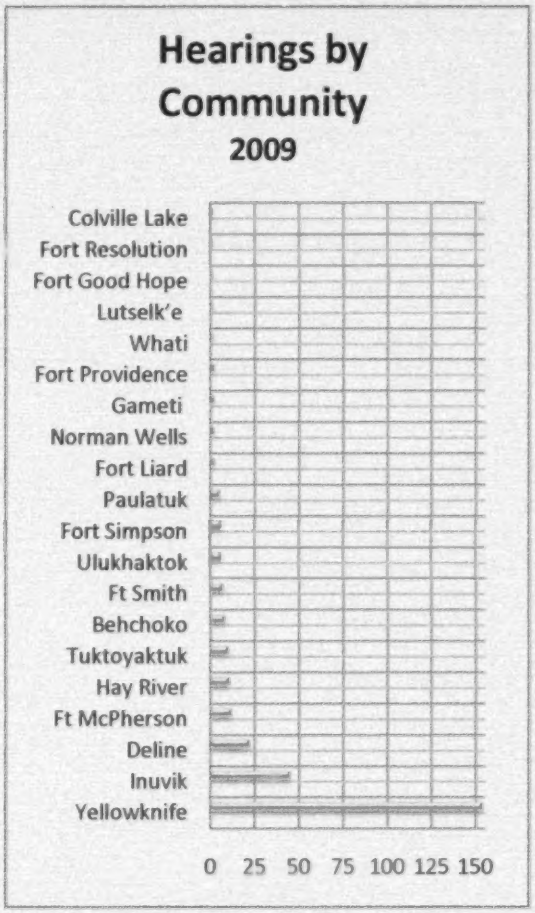


The second most frequent remedy provided to tenants involves repair and maintenance of the rental premises. In most cases, a landlord is obligated to provide and maintain the rental premises in a good state of repair. If a landlord breaches this obligation a tenant may file an *Application to a Rental Officer*.

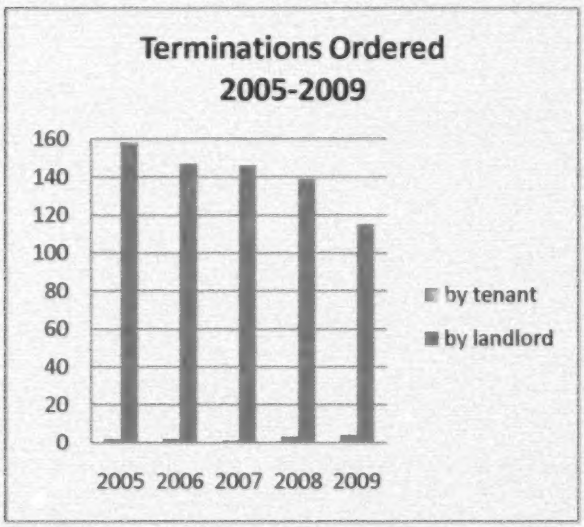
Although landlords are the most frequent users of dispute resolution, we receive many requests for information from tenants by phone, through the website and Email, and at the office.

Applications from 20 communities were heard in 2009. Fifty two percent of applications heard related to premises in the City of Yellowknife. Hearings are scheduled approximately every three weeks in Yellowknife and the docket is often filled to capacity.

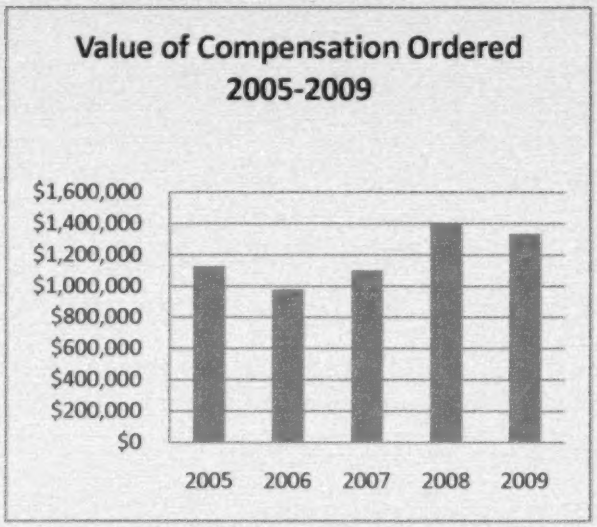
Hearings are scheduled in other communities as applications are received. Hearings by telephone are frequently used when only a few applications are received from a location. Telephone hearings help ensure that disputes outside of Yellowknife are resolved as rapidly as possible. Sixty nine percent of the hearings held outside of Yellowknife were conducted by telephone in 2009.



On the application of a landlord, a rental officer may issue an order terminating a tenancy agreement. Most termination orders result from some breach of the tenancy agreement. The *Residential Tenancies Act* permits a rental officer to mediate disputes between landlord and tenants and mediation is often used to permit a tenancy agreement to continue if an agreement can be reached to resolve the issue. For example, it may be established at a hearing that a tenant owes rent to the landlord who is seeking an order to pay the rent and termination of the tenancy agreement. The rental officer may be able to arrange an agreement between the parties which would result in the continuation of the tenancy agreement if the rent arrears are paid by a certain date or in a certain manner. The result is a conditional termination order. In most cases, the condition is to pay the outstanding rent by a certain date. Although 40% of the applications heard in 2009 resulted in a termination order, most were conditional. We estimate that only a few actually resulted in termination of the tenancy agreement. The percentage of termination orders issued has

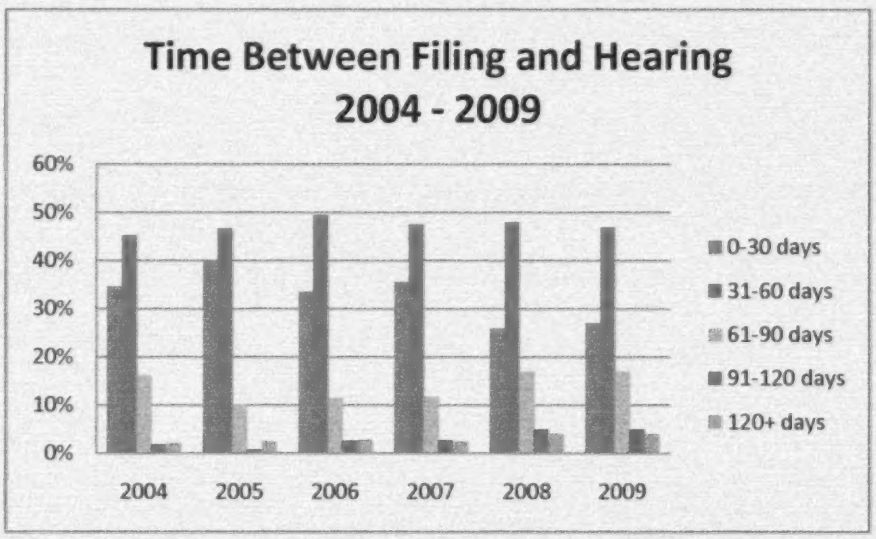


remained relatively stable over the past five years.



The total value of monetary relief ordered in 2009 was more than $1.3 million, a slight decrease from the previous year. The average relief granted increased in 2009 by $424 to $5317. Monetary relief is most commonly awarded for rent arrears or when there have been damages to rental premises but can also be provided for lost rent when premises are abandoned and loss of possession or enjoyment of the premises.

The length of time it takes from when an application is filed to the time it is heard depends on a number of factors, some of which are outside the control of the Rental Office. Users of the services occasionally complain about the length of time it takes to resolve a dispute and we continue to do what we can to make the administration of the process move as rapidly as possible.



From 2005 through 2007 we heard 80% of the applications within 60 days of filing. In 2008 however, we dropped below that target, hearing 74% of applications within 60 days. One of the factors affecting this was a Supreme Court decision regarding service of notices. The Act requires the rental officer to serve the landlord and the tenant with notices outlining the time, date and place of the hearing. This notice may be personally served or served by registered mail. The Act contains a deeming provision which allows the rental officer to consider a notice served seven days after mailing. The Court ruled that this assumption is rebutable. The result has been that when the rental officer does not have confirmation of receipt of the notice, the matter is often not heard and another hearing date scheduled. We now attempt to phone parties who have been sent notices by registered mail where we do not have confirmation of delivery from Canada Post. This has enabled us to maintain the 2008 level of 74%. We encourage applicants to include telephone numbers, e-mail addresses or other contact

information on the application so we may take every possible step to inform the respondent of the hearing date and avoid delays.

Residential Tenancies Act Amendments

As noted previously, the *Residential Tenancies Act* was amended during the 2nd session of the 16th Assembly although the amendments have yet to be brought into force. The rental office has been working with the Department of Justice to formulate new regulations for the amendments and produce public information and new forms regarding the changes. Once the material has been finalized and distributed, the new provisions will be brought into force.

Many of the changes to the Act are minor in nature and serve to correct inconsistencies in the statute. Others, like the changes to late rent penalties and security deposit interest rates, serve to make the provisions more realistic. Others reflect significant changes in the dispute resolution process and security of tenure for public housing tenants. The legislative changes reflect the views of landlords and tenants which were expressed during the consultation phase of the legislative review.

When the amendments come into effect, a landlord will be able to collect a pet deposit if the parties agree that a pet may be kept on the premises. The amendments will also permit a rental officer to issue orders for eviction. In subsidized public housing, tenancy agreements will automatically renew as is the case in all other premises except employer supplied housing. The public housing landlord will, however, be able to give notice to terminate the tenancy agreement in the same manner as the tenant is required to give notice. Interest rates for security deposits will more closely reflect the rate a landlord will be able to earn in a trust account and the penalty for late rent will be increased to provide a more realistic financial incentive to pay rent on time.

It is difficult to determine the additional work load the new amendments will impose on the Rental Office. There will undoubtedly be an additional administrative burden of filing applications requesting eviction and eviction orders but just how many of these applications will be filed or heard is uncertain. It may be that some landlords who have not proceeded with eviction in the past due to the legal cost of representation in Court will become more inclined to file with the rental office and present their case without legal counsel. We will continue to monitor the volume of applications and hearings to determine what, if any, additional resources may be necessary in the future.

Issues

In my 2007 and 2008 Annual Reports I noted the problems that the *Public Housing Rental Subsidy Program* was creating for landlords and tenants. These problems persisted throughout 2009. The level of uncollectable rent arrears and evidentiary problems directly related to this program policy continued to adversely affect public housing providers.

Fortunately, the Government of the Northwest Territories has decided to return the assessment of social housing rent to the landlords. This is, in my opinion, an excellent decision which will

restore the relationship between public housing providers and their tenants to a normal landlord-tenant relationship without the confusing addition of a third party. I look forward to the implementation of this important change in 2010 and the improvement in the dispute resolution process I am certain it will create.

There appear to be some inconsistencies between the *Residential Tenancies Act* and the *Condominium Act* regarding the tenure of tenants when an apartment building is converted to a condominium and the ability of a condominium corporation to make an application to a rental officer for an order of possession. It is suggested that the Department of Justice review this matter and suggest appropriate legislative changes to address these issues.

References:

1. Rental Market Report, Yellowknife Highlights, Canada Mortgage and Housing Corporation, Fall, 2009

Statistics for the Year
January 1, 2009 to December 31, 2009

Applications to a Rental Officer
2001-2009

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Applications Filed	339	426	457	523	591	534	544	711	635
By Landlords	295	384	409	481	551	489	502	667	576
By Tenants	44	42	48	42	40	45	42	44	59
Applications Heard	221	271	296	383	362	390	374	346	299
By Landlords	195	242	270	353	336	359	351	318	259
By Tenants	26	29	26	30	26	31	23	28	40
Applications withdrawn	106	157	146	161	210	143	168	352	333
By Applicant	67	130	108	117	172	126	155	315	269
By Rental Officer	39	27	38	44	38	17	13	37	64

Hearings Held, by Community and Type
2009

Community	In person	By phone	Total
Behchoko	8		8
Colville Lake		1	1
Deline	10	12	22
Ft. Good Hope		1	1
Ft. Liard		2	2
Ft. McPherson		12	12
Ft. Providence		2	2
Ft. Resolution		1	1
Ft. Simpson		6	6
Ft. Smith		7	7
Gameti		2	2
Hay River		11	11
Inuvik	26	19	45
Lutselk'e (heard in Yellowknife)	1		1
Norman Wells		2	2
Paulatuk		5	5
Tuktoyaktuk		10	10
Ulukhaktok		6	6
Whati		1	1
Yellowknife	153	1	154
TOTAL	198	101	299

Remedies Provided to Landlords
2009

Remedy	Number of Orders	Percentage
Non-payment of rent	432	79%
Repair of damages	54	10%
Disturbance	18	3%
Other obligations	12	2%
Compensation for lost rent	9	1%
Use and occupation	7	1%
All other obligations	4	1%

Remedies Provided to Tenants
2009

Remedy	Number of Orders	Percentage
Security deposits	11	31%
Repairs	7	20%
Disturbance of possession	5	14%
Entry	4	11%
Abandoned property	4	11%
Alteration of locks	2	6%
All other obligations	2	6%

Terminations Ordered *
2001 - 2009

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Requested by Tenant	0	1	0	3	2	2	1	3	4
Requested by Landlord	89	114	115	158	158	147	146	139	115
As % of Applications Heard	40%	42%	39%	42%	44%	38%	39%	41%	40%

* includes orders which terminate tenancy agreements only if specific conditions are not met.

Value of Compensation Ordered
2004 - 2009

	2004	2005	2006	2007	2008	2009
Total Orders Granting Monetary Relief	328	286	327	319	286	251
Total Value of Orders Issued	$1,298,310	$1,124,994	$978,587	$1,102,170	$1,399,362	$1,334,455
Average Value	$3958	$3934	$2993	$3455	$4893	$5317

Elapsed Time Between Filing Date and Hearing Date
Applications heard During Period 2005-2009

	2005	%	2006	%	2007	%	2008	%	2009	%
0-30 days	146	40%	131	34%	133	36%	90	26%	80	27%
31-60 days	169	47%	193	49%	178	48%	167	48%	140	47%
61-90 days	35	10%	45	12%	44	12%	59	17%	50	17%
91-120 days	3	0.8%	10	2.6%	10	2.7%	18	5.2%	15	5.0%
120+ days	9	2.5%	11	2.8%	9	2.4%	12	3.5%	14	4.7%

Totals may add to more than 100% due to rounding.